

STATE OF MICHIGAN  
IN THE SUPREME COURT

MARK TODD TWICHEL, Personal  
Representative of the Estate of BRADY Supreme Court Docket No. 121822  
S. SIES, Deceased,

Plaintiff-Appellee

vs.

MIC GENERAL INSURANCE  
CORPORATION,

Defendant-Appellant

Court of Appeals Docket No. 228363

Lower Court Case No. 99-65692-NI  
Honorable Archie L. Hayman

**THOMAS W. WAUN (P-34224)**  
**MICHAEL P. PARILLO (P-56615)**  
Attorney for Plaintiff  
10683 S. Saginaw St., Ste. D  
Grand Blanc, Michigan 48439  
(810) 695-6100

**RAYMOND W. MORGANTI (P-27003)**  
Attorney for Defendant  
One Towne Square, Suite 1400  
P.O. Box 5068  
Southfield, Michigan 48086-5068  
(248) 357-1400

**PLAINTIFF-APPELLEE'S SUPPLEMENTAL BRIEF IN OPPOSITION  
TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

121822  
LAW OFFICES  
ASCHA & WAUN, P.C.  
583 SOUTH SAGINAW ST.  
SUITE D  
GRAND BLANC, MI 48439  
(810) 695-6100

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## STATEMENT OF QUESTIONS INVOLVED

Is the estate of the decedent entitled to recover Michigan No Fault Benefits from the Defendant-Appellant, where the trial court determined that the decedent was not an owner of the vehicle in question under either the Michigan No Fault Act or Motor Vehicle Code?

Trial Court Answered: Yes

Plaintiff-Appellee Answers: Yes

Defendant-Appellant Answers: No.

Is the decedent's estate entitled to recover uninsured motorist benefits from Defendant-Appellant, where the trial court determined that the decedent was not an owner of the motor vehicle in question as that term is used in the Defendant's policy of insurance?

Trial Court Answered: Yes

Plaintiff-Appellee Answers: Yes

Defendant-Appellant Answers: No

LAW OFFICES

ASCHA & WAUN, P.C.

1683 SOUTH SAGINAW ST.

SUITE D

RAND BLANC, MI 48439

(810) 695-6100

## INTRODUCTION

Pursuant to this Court's order of August 1, 2003, and Amended Order of August 5, 2003, Plaintiff-Appellee submits the following Supplemental Brief in Opposition to Defendant-Appellant's Application for Leave to Appeal.

## FACTUAL BACKGROUND

Plaintiff's Decedent, Brady Sies, was fatally injured in an automobile accident involving two uninsured vehicles on November 17, 1998. At the time of the accident, Mr. Sies was driving a vehicle which he had recently agreed to purchase from his friend, Matt Roach, on November 12, 1998. The agreed upon purchase price was \$600.00 (Exhibit A, paragraph 2). An initial payment of \$300.00 was made on November 12, 1998, at which time Mr. Sies took possession of the vehicle. (Exhibit A, paragraphs 2, 3). Title did not transfer on this date, however, as Mr. Roach decided to hold the Title until the full purchase price had been paid (Exhibit A, paragraph 3). Because Mr. Sies was not the titled owner of the vehicle and did not meet the other definitions of ownership under either the Motor Vehicle Code, MCL 257.37; MSA 9.1837, or the No Fault Act, MCL 500.3101(2)(g); MSA 24.13101(2), his Estate sought benefits and coverages from the Defendant which were due and owing under the applicable sections of the No Fault Act and Uninsured Motorist provisions in Defendant's policy. Defendant insured Plaintiff's Decedent's grandparents, Elmer and Betty Sies, with whom Plaintiff's Decedent resided on the date of the accident, thus providing coverage to Plaintiff's Decedent as well.

Defendant denied the benefits and coverages sought by Decedent's Estate and a Declaratory Judgment action followed. Plaintiff was granted Summary Disposition at the Trial Court level by the Honorable Archie L. Hayman. Judge Hayman's decision was affirmed by the Court of Appeals. A copy of the Court of Appeals Opinion is attached as Exhibit B, Twichel v. MIC General Insurance Corp. 251 Mich App 476 (2002). Plaintiff should indicate that the Court of Appeals Opinion was inadvertently omitted in the original Brief filed in this matter.

## ARGUMENT

I. **Plaintiff's Decedent Was Not an Owner, as That Term is Defined, Under Either the No Fault Act or the Motor Vehicle Code.**

Under Michigan's No Fault Act, an owner is defined as follows:

"(g) 'owner' means any of the following:

(i) A person renting a motor vehicle or having the use thereof under a lease or otherwise for a period that is greater than 30 days.

(ii) A person who holds the legal title to a vehicle other than a person engaged in the business of leasing motor vehicles who is the lessor of a motor vehicle pursuant to a lease providing for the use of the motor vehicle by the lessee for a period that is greater than 30 days.

(iii) A person who had immediate right of possession of a motor vehicle under an installment sale contract."

An "owner" is defined under the Motor Vehicle Code as:

"(a) Any person, firm, association or corporation renting a motor vehicle or having the exclusive use thereof, whether a lease or otherwise, for a period that is greater than 30 days.

(b) Except as otherwise provided in Section 401a, a person who holds the legal title of a vehicle.

(c) A person who has the immediate right of possession of a vehicle under an installment sale contract. MCL 257.37; MSA 9.1837.

The definition of "owner" under the No-Fault Act, MCL 500.3101(2)(g); MSA 24.13101(2) as well as the Motor Vehicle Code, MCL 257.37; MSA 9.1837, is almost identical. Under either definition it is evident that Plaintiff's decedent was not an owner at the time of the fatal accident. The Decedent did not have possession or control of the motor vehicle for a period greater than 30 days when the accident occurred; he did not have legal title to the vehicle; and he did not have immediate right of possession of the motor vehicle under an installment sale contract.

**A. Mr. Sies Did Not Have Exclusive Use of the Vehicle for 30 Days**

As noted in the original briefs filed in this matter there is no dispute that Plaintiff's decedent, Brady Sies, did not have exclusive use of the motor vehicle involved in this accident for a period of greater than 30 days. As such, Mr. Sies could not have had exclusive use of the vehicle and the Ringewold case is inapplicable. Additionally, as the Court of Appeals stated in its opinion, the Ringewold case was brought under the Owner's Liability Statute, the purpose of which is " 'to place liability on the person who had ultimate control of the vehicle.' " (Exhibit B, Twichel, at 483 citing Ringewold, at 134). On the contrary, the instant case involves Michigan's No Fault Insurance system which is meant to " 'insure persons injured in motor vehicle accidents of 'assured, adequate and

prompt reparation' for certain economic losses.' " (Exhibit B, Twichel, at 484 citing Traveler's Insurance v. Uhaul of Michigan, Inc., 235 Mich App 273, 282 (1999) (emphasis omitted) ).

Plaintiff would also direct this Court's attention to the Court of Appeals Opinion where it noted that "for purposes of determining ownership under MCL Section 500.3101(2)(g)(i) we conclude that an individual must have actual use of the motor vehicle, not merely the right to use the motor vehicle, for more than 30 days. Here, it is undisputed that the decedent had the use of the motor vehicle for less than 30 days. Therefore, the decedent was not an 'owner' of the vehicle under the statutory provision." (Exhibit B, Twichel, at 485). Thus, because of the different purposes of the statutes applicable to Ringewold and the instant case, the Court of Appeals determined that the right to exclusive use was not enough to establish ownership under the No Fault Act. Even if the right to exclusive use is enough to satisfy the ownership requirement, however, it is well established for the reasons set forth above and in Plaintiff's original Brief in Opposition to Defendant's Application for Leave to Appeal that Brady Sies did not have exclusive use of the vehicle in question.

**B. Mr. Sies was not the Titled Owner of the Vehicle Involved in the Accident**

It is undisputed that Plaintiff's decedent did not have title to the vehicle involved in the accident.



C. **Mr. Sies did not have Immediate Right of Possession of the Vehicle Under an Installment Sale Contract**

Defendant submits that Plaintiff's Decedent was an owner because he had the immediate right to possession of the vehicle under an installment sale contract at the time he was fatally injured. Defendant notes that the No Fault Law does not define the word "installment" and should therefore be given its "general dictionary definition." The definition provided for the term "installment" in Defendant's original brief is "One of the parts into which a debt is divided when payment is made at intervals." Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> Edition.

With regard to this definition, Plaintiff would direct the Court's attention to general dictionary definitions provided in Webster's Encyclopedic Unabridged Dictionary of the English Language, Deluxe Edition. In that dictionary, the term "installment" is defined as:

"Any of several parts into which a debt or other sum payable is divided for payment at successive fixed times. (emphasis added).

The Webster's Encyclopedic Unabridged Dictionary also defines the term "installment plan." The definition for that term is "a system for paying a debt in fixed amounts at specified intervals."

Under either of the definitions provided in the Webster's Encyclopedic Unabridged Dictionary of the English Language, it is indicated that an "installment" refers to payments made at fixed times or fixed intervals in fixed amounts. There is no evidence that there was a fixed time or fixed interval at

which Mr. Sies was going to pay Matthew Roach a fixed amount for the pickup truck in this case. As such, Brady Sies does not meet the definition of "owner" under an installment sales contract pursuant to either of the definitions provided in Webster's Encyclopedic Unabridged Dictionary of the English Language.

Moreover, as noted in Plaintiff's original Brief, Black's Law Dictionary defines the terms "installment sale" and "installment contract" to involve commercial or retail settings. Black's Law Dictionary, 6<sup>th</sup> Edition. Using either the Webster's Encyclopedic Unabridged Dictionary of the English Language or Black's, therefore, there are reasonable definitions that would bring this transaction outside the installment sales contract definition of ownership as set forth in the No Fault Act and Motor Vehicle Code. Because the term is not defined under either Act, this court may look to Black's and/or Webster's for a reasonable definition of the term. In doing so, the Court will note that Brady Sies did not meet any of the definitions and therefore cannot be an owner under an installment sales contract as argued by Defendant.

Finally, Plaintiff would urge the Court to read the No Fault Act in pari materia with the Motor Vehicle Sales Finance Act, which states that::

"a. 'Installment Sales Contract' or 'contract' means a contract for the retail sale of a motor vehicle..." MCL 492.102(9) (emphasis added).

Clearly, the situation in the instant case was not a retail sale of a motor vehicle and if the Court chooses to read the No Fault Act in pari materia with the Motor Vehicle Sales Finance Act, it is evident that Brady Sies did not fall under the

definition of "owner" under an installment sales contract under the No Fault Act or Motor Vehicle Code.

**II. Plaintiff's Decedent was not an Owner as that Term is Used in the Policy of Insurance Written by Defendant MIC**

As noted in Plaintiff's original brief, there is, at the very least, an ambiguity with regard to the definition of "owner" as set forth in Defendant MIC's contract of insurance. Any ambiguities are to be construed against the insurer who is the drafter of the contract. State Farm Mutual Automobile Insurance Co. v. Enterprise Leasing Co., 452 Mich 25, 38 (1996). Moreover, exclusionary clauses such as the one Defendant is attempting to invoke in this case are to be strictly construed in favor of the insured. Auto Owners Insurance Co. v. Churchman, 440 Mich 560, 567 (1992). For the reasons set forth more fully in Plaintiff's original Brief, Defendant's arguments regarding the policy language must also fail.

**RELIEF REQUESTED**

For the reasons set forth above and in Plaintiff's original brief, it is evident that Brady Sies was not an owner of the automobile involved in the fatal accident of November 17, 1998. Because Plaintiff's decedent cannot be defined as an owner of the automobile involved in the accident, Summary Disposition in favor of Plaintiff is appropriate and the Trial Court and Court of Appeals decisions should not be disturbed. Plaintiff should be permitted to pursue insurance benefits pursuant to the agreement to arbitrate, attached as Exhibit C. Included in these insurance benefits are a claim for uninsured motorist coverage and

Michigan PIP and survivor's benefits on behalf of Plaintiff's decedent's son,  
McKenzie Sies, who had not been born at the time of his father's death.

WASCHA & WAUN, P.C.

By: Michael P. Parillo

THOMAS W. WAUN (P-34224)  
MICHAEL P. PARILLO (P-56615)  
Attorneys for Plaintiff-Appellee  
10683 S. Saginaw St., Ste. D  
Grand Blanc, Michigan 48439  
(810) 695-6100

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